

1 COOLEY LLP
 2 BENEDICT Y. HUR (224018)
 (bhur@cooley.com)
 3 SIMONA AGNOLUCCI (246943)
 (sagnolucci@cooley.com)
 4 EDUARDO E. SANTACANA (281668)
 (esantacana@cooley.com)
 ARGEMIRA FLÓREZ (331153)
 5 (aflorez@cooley.com)
 HARRIS MATEEN (335593)
 6 (hmateen@cooley.com)
 ISABELLA MCKINLEY CORBO (346226)
 7 (icorbo@cooley.com)
 3 Embarcadero Center, 20th Floor
 8 San Francisco, California 94111-4004
 Telephone: +1 415 693 2000
 9 Facsimile: +1 415 693 2222

10 Attorneys for Defendant
 Google LLC
 11

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14

15 ANIBAL RODRIGUEZ, et al. individually and
 on behalf of all others similarly situated,
 16

Plaintiff,

v.

GOOGLE LLC,

Defendant.

Case No. 3:20-CV-04688-RS

**DEFENDANT GOOGLE LLC'S MOTION IN
LIMINE NO. 3 TO EXCLUDE REFERENCE TO
AND EVIDENCE OF DATA LEAKS AND
OTHER LITIGATION**

Date: July 30, 2025
 Time: 09:30 A.M.
 Court: Courtroom 3, 17th Floor, SF
 Judge: Hon. Richard Seeborg

Date Action Filed: July 14, 2025
 Trial Date: August 18, 2025

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on July 30, 2025, at 09:30 A.M., before the Honorable
 3 Richard Seeborg of the United States District Court for the Northern District of California in
 4 Courtroom 3 of the United States District Court for the Northern District of California, San
 5 Francisco Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, Defendant Google
 6 LLC (“Google”) will move the Court to exclude reference to and/or introduction of evidence
 7 relating to (1) leaks or misuse of unrelated data and (2) other litigation and regulatory or
 8 governmental investigations involving Google’s privacy practices.

9 This Motion is based on this Notice of Motion, accompanying Memorandum of Points and
 10 Authorities, the Omnibus Declaration of Eduardo E. Santacana in Support of Google LLC’s
 11 Motions in Limine Nos. 1-12 (“Santacana Decl.”) and exhibits attached thereto, and all other
 12 evidence in the record.

13 **ISSUE PRESENTED**

14 Whether reference to and/or introduction of evidence relating to (1) leaks or misuse of
 15 unrelated data and (2) other litigation and regulatory or governmental investigations involving
 16 Google’s privacy practices should be excluded pursuant to Rules 401, 402, 403, and 404 of the
 17 Federal Rules of Evidence.

18 Dated: June 24, 2025

COOLEY LLP

21 By: /s/ Eduardo E. Santacana
 22 Benedict Y. Hur
 23 Simona Agnolucci
 24 Eduardo Santacana
 25 Argemira Flórez
 26 Harris Mateen
 27 Isabella McKinley Corbo

28 Attorneys for Defendant
 29 Google LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Google respectfully moves to exclude reference to and/or introduction of evidence relating to (1) leaks or misuse of unrelated data and (2) other litigation and regulatory or governmental investigations generally involving Google’s privacy practices (“Other Matters”).¹

Plaintiffs have disclosed their intention to prove certain elements of their claims by focusing the jury on irrelevant or unfounded hypothetical harms and irrelevant past alleged wrongdoing by Google. This trial should be about the technology, data, and conduct at issue in *this* case, and the Court should prevent Plaintiffs causing prejudice to Google by trying (or re-trying) *other* cases and issues.

Any mention of data leaks or misuse—many of which are hypothetical—should be excluded under Federal Rules of Evidence 401 and 402 because they are wholly irrelevant to this case, which does not include allegations that any of Plaintiffs’ data (let alone sensitive data) has been leaked or otherwise publicized. Fed. R. Evid. 401(a) (“Evidence is relevant if [] it has any tendency to make a fact more or less probable than it would be without the evidence”); Fed. R. Evid. 402 (“Irrelevant evidence is not admissible”). Even if there were any marginal relevance, that relevance would be substantially outweighed by the risk of unfair prejudice, jury confusion, and wasted time under Rule 403. Fed. R. Evid. 403. And any such mention of leaks or misuse involving Google itself should also be barred under Rule 404. *See* Fed. R. Evid. 404(b) (“Evidence of any other crime, wrong, or act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.”).

¹ These matters include, but are not limited to, *Calhoun et al. v. Google LLC*, 4:20-cv-05146-YGR (N.D. Cal.); *Brown et al. v. Google LLC*, 4:20-cv-03664-YGR (N.D. Cal.); *Luna et. al. v. Google LLC*, Case No. 24CV434093, Superior Court Santa Clara County (2024); *In Re Google RTB Consumer Privacy Litigation*, No. 4:21-cv-02155-YGR (N.D. Cal.); *Taylor et al. v. Google LLC*, 5:20-cv-07956-VKD (N.D. Cal.); *District of Columbia v. Google LLC*, No. 2022 CA 000330 B (D.C. Superior Court); *State of Indiana v. Google LLC*, No. 49D01-2201-PL-002399 (Marion County Superior Court); *State of Arizona v. Google LLC*, CV 12 2020-006219 (Superior Court Arizona. Maricopa Cty.); *State of Texas v. Google LLC*, Case No.: CV58999, District Court Midland County, Texas (2022); *State of Texas v. Google LLC*, No. 22-01-88230-D (District Court of Victoria County, 377th Judicial District); *State of Washington v. Google LLC*, No. 22-2-01103-3-SEA (King County Superior Court); and *Australian Competition and Consumer Commission (ACCC) v. Google LLC*, (No 2) FCA 1476, Federal Court of Australia (2019).

1 The same is true of reference to Other Matters. Allowing Plaintiffs to refer to and/or
 2 introduce evidence regarding Other Matters, none of which are relevant to Plaintiffs' claims, would
 3 risk confusing and misleading the jury on the issues here. Additionally, reference to Other Matters
 4 could only be offered as evidence of Google's character or reputation, in violation of Rule 404. The
 5 Court should grant Google's motion.

6 **II. ARGUMENT**

7 **A. The court should bar reference to leaks or misuse of unrelated data.**

8 Allowing Plaintiffs to introduce "examples" about leaks or misuse of data unrelated to the
 9 matters at issue—none of which reflect any actual harm alleged by Plaintiffs—would be improper
 10 for two primary reasons: (1) such "examples" are not relevant and (2) they would unduly prejudice
 11 Google. *See Fed. R. Evid. 401; Fed. R. Evid. 402; Fed. R. Evid. 403.*

12 *These "examples" and references are not relevant.* Plaintiffs made it clear, both via the
 13 2023 and 2025 expert reports of Bruce Schneier and during the May 15, 2025 hearing on the Parties'
 14 *Daubert* motions (*Daubert* hearing), that they intend to reference "examples" of inflammatory and
 15 sensitive topics completely irrelevant to this litigation, including abortion, domestic violence, data
 16 breaches, and identity theft. Plaintiffs do not allege that any such harms have befallen them as a
 17 result of Google's alleged conduct. Most of these references are hypothetical musings regarding
 18 the potential risks of data sharing writ large. To the extent that any such references concern actual
 19 data leaks involving Google, those leaks are not at issue in this case. And they amount to nothing
 20 more than improper character evidence under Federal Rule of Evidence 404. Because such evidence
 21 does not have "any tendency to make" any of Plaintiffs' claims "more or less probable," it is
 22 irrelevant and should be excluded. Fed. R. Evid. 401; *see also* Fed. R. Evid. 402 ("Irrelevant
 23 evidence is not admissible").

24 Yet, as detailed in Google's Motion to Exclude Mr. Schneier's testimony (ECF No. 474),
 25 both Mr. Schneier's 2023 and 2025 Reports include irrelevant, inflammatory, and prejudicial
 26 references to these sensitive topics. *See, e.g.*, ECF No. 474-2 (2023 Report) (¶ 66, referencing
 27 "[m]ajor data leaks."); ¶ 67, referencing the Ashley Madison data breach; ¶¶ 105–107, referencing
 28 *Roe v. Wade* and leaks of data from menstrual tracking applications); *see also, e.g.*, ECF No. 474-

1 4 (2025 Report) (¶ 6, referencing the criminalization of abortion in certain states following the
 2 overturning of *Roe v. Wade*; ¶¶ 7–8, referencing government surveillance; ¶¶ 15–18, referencing
 3 Google’s practices related to location data from sensitive places including abortion clinics). And
 4 during the *Daubert* hearing, the Court suggested that evidence about politically and emotionally
 5 charged topics such as “*Roe v. Wade*” and “stalking” were inappropriate for trial. Omnibus
 6 Declaration of Eduardo E. Santacana in Support of Google LLC’s Motions in Limine Nos. 1-12
 7 (“Santacana Decl.”), Ex. L (May 15, 2025 Tr., 18:12–13).

8 Despite this warning, Plaintiffs could not commit to refraining from introducing such
 9 evidence and testimony. Rather, when pressed, counsel stated that “[t]he most we [would] get into
 10 [such evidence] is an example. The abortion thing is an example . . . health data apps can provide
 11 information [from] which you can glean whether a person has had an abortion.” *Id.*, 18:14–17. But
 12 this misses the point entirely: Because these “examples” are irrelevant and have no basis in actual
 13 harm, using them *at all* is unduly inflammatory and prejudicial to Google, and violates Rules 401,
 14 402, and 403. *See* Fed. R. Evid. 403; *see also* Fed. R. Evid. 401 & 402; *United States v. Handy*,
 15 2023 WL 5348660, at *3 (D.D.C. Aug. 21, 2023) (excluding abortion-related evidence where “the
 16 merits or morals of abortion [were] irrelevant”).

17 ***These “examples” and references are unduly prejudicial.*** Unfairly prejudicial evidence is
 18 evidence having “an undue tendency to suggest decision on an improper basis, commonly, though
 19 not necessarily, an emotional one.” *Old Chief v. United States*, 519 U.S. 172, 180 (1997) (citation
 20 omitted). Indeed, few topics are as emotionally charged as reproductive autonomy, especially
 21 following the overturning of *Roe v. Wade*, 410 U.S. 113 (1973), through *Dobbs v. Jackson Women’s*
 22 *Health Organization*, 597 U.S. 215 (2020), and the resulting changes to the accessibility and
 23 legality of abortion. Reference to domestic violence, stalking, and hacks of sensitive data—
 24 including those that have the potential to cause financial ruin—likewise carries the extreme risk of
 25 inciting fear and prejudice in the jury. This testimony would do nothing more than inflame jurors’
 26 emotions, distract from the facts before them, and invite speculation about a parade of horribles far
 27 removed from the context of this case. This is precisely the type of emotional ploy that could “lure
 28

1 the factfinder into declaring guilt on a ground different from proof specific to the offense" alleged.

2 *Old Chief*, 519 U.S. at 180. The Court should exclude any such references from trial.

3 **B. The Court should bar reference to Other Matters.**

4 Plaintiffs have made clear during meet and confer discussions that they intend to refer to
 5 privacy-related litigation and/or settlements involving Google as evidence of Google's pattern and
 6 practice when it comes to user privacy. Santacana Decl. ¶ 6. And Plaintiffs' proposed exhibit list
 7 includes several references to prior privacy-related litigations involving Google. See Santacana
 8 Decl., Ex. U (PX-364, press release regarding settlement in *State of Arizona v. Google LLC*, CV 12
 9 2020-006219 (Super. Ct. Ariz. Maricopa Cnty.)); *id.*, Ex. V (PX-365, press release regarding
 10 settlement in *State of Texas v. Google LLC*, Case No.: CV58999, Dist. Ct. Midland Cnty., Texas
 11 (2022) and *State of Texas v. Google LLC*, No. 22-01-88230-D (Dist. Ct. of Victoria Cnty., 377th
 12 Judicial District)); *see also*, e.g., *id.*, ¶ 45 (PX-354–PX-363, from docket in *Brown et al. v. Google*
 13 *LLC*, 4:20-cv-03664-YGR (N.D. Cal.)). Evidence pertaining to Other Matters should be excluded
 14 because (1) Other Matters are not relevant and such evidence would not be helpful to the jury, (2)
 15 it constitutes improper character evidence, and (3) it would unduly prejudice Google.

16 ***Evidence of and from Other Matters is not relevant and would not be helpful to the jury.***

17 Lawsuits and investigations are not relevant to this action merely because they involve Google's
 18 privacy practices. No Other Matter included the same sets of facts or parties, and many of them
 19 involved entirely different laws from different jurisdictions. For example, the plaintiffs in *Brown*
 20 *v. Google* alleged violations regarding Google Chrome's Incognito Mode, and the *Brown v. Google*
 21 plaintiffs alleged violations relating to Chrome's Sync feature. Neither of those products are at issue
 22 in this case. The plaintiffs in *Arizona v. Google*, *D.C. v. Google*, *Indiana v. Google*, *Texas v.*
 23 *Google*, and *Washington v. Google* all alleged various state law claims relating to Google's location
 24 tracking disclosures, which are also not at issue here. Any evidence, testimony, or argument
 25 regarding Other Matters should be excluded as not relevant under Rules 401 and 402.

26 Even if these Other Matters bear some marginal relevance to the issues in this action,
 27 allowing Plaintiffs to make such reference, or introduce such evidence, would risk misleading and
 28 confusing a jury because these cases and investigations either apply U.S. law (from other states) to

1 an incomparable set of facts—e.g., *Arizona v. Google* and *Texas v. Google*—or consider Google’s
 2 practices under foreign laws—e.g., *ACCC v. Google*—and thus would not be helpful to a jury in
 3 California considering whether Google Analytics for Firebase’s alleged use of supplemental Web
 4 & App Activity (sWAA)-off data violated U.S. law. *See Fed. R. Evid. 403* (“The court may exclude
 5 relevant evidence if its probative value is substantially outweighed by a danger of . . . confusing
 6 the issues [or] misleading the jury”). Further, none resulted in actual findings of liability. The
 7 Supreme Court has made clear that “[i]n the Rule 404(b) context, similar act evidence is relevant
 8 only if the jury can reasonably conclude that the act occurred and that the defendant was the actor.”
 9 *Huddleston v. United States*, 485 U.S. 681, 689 (1988). A mere allegation does not rise to this
 10 standard.

11 ***Reference to Other Matters would violate Rule 404(b).*** “Rule 404(b) prevents using
 12 evidence of similar suits brought against Defendant in order to prove that Defendant is guilty of
 13 similar conduct in this instance.” *Snyder v. Bank of Am., N.A.*, 2020 WL 6462400, at *10 (N.D.
 14 Cal. Nov. 3, 2020) (internal quotations and citation omitted). Yet this is the only reason for which
 15 Plaintiffs want to introduce evidence of Other Matters—to improperly lead the jury to draw
 16 inferences that Google must be liable in this case. None of the Other Matters concerned the Google
 17 products at issue in this litigation, nor did they result in final verdicts. They remain nothing more
 18 than allegations. And the fact that various privacy-related allegations have been made against
 19 Google, without more, cannot support any of Plaintiffs’ arguments or theories about Google’s
 20 “motive, opportunity, intent” or any other enumerated exception to Rule 404. *See Fed. R. Evid.*
 21 404(b)(2) (evidence of prior acts may be admissible only to show “motive, opportunity, intent,
 22 preparation, plan, knowledge, identity, absence of mistake, or lack of accident.”); *see also*
 23 *Huddleston*, 485 U.S. at 689 (“This is not to say, however, that the [Plaintiffs’] may parade past the
 24 jury a litany of potentially prejudicial similar acts that have been established or connected to the
 25 defendant only by unsubstantiated innuendo.”). Yet Plaintiffs represented during meet and confer
 26 efforts with Google that they intend to introduce this evidence as propensity evidence, to argue that
 27 Google *must* have committed wrongdoing here simply because others have accused it of
 28 wrongdoing in the past—precisely what Rule 403 was written to prevent. *Branch v. Umphenour*,

1 2023 WL 3077838, at *2 (E.D. Cal. Apr. 25, 2023) (“[E]vidence of a prior incident cannot be used
 2 to show a propensity to cause harm to Plaintiff. Such evidence is impermissible character evidence,
 3 and is not admissible to show that any Defendant acted improperly”).

4 ***Reference to Other Matters would be unduly prejudicial to Google.*** Even if evidence meets
 5 the test for inclusion “under Rule 404(b), the court must then decide whether the probative value is
 6 substantially outweighed by the prejudicial impact under Rule 403.” *United States v. Romero*, 282
 7 F.3d 683, 688 (9th Cir. 2002). Here, it is. The probative value of Other Matters is close to none,
 8 particularly where (as here) those suits were settled and voluntarily dismissed without any finding
 9 of liability. Allowing such evidence would require the parties to engage in a series of mini-trials
 10 within the confines of the Court’s 20-hour per side limit, which would be a highly inefficient and
 11 improper use of the jury’s and the Court’s time. *See, e.g., Grace v. Apple, Inc.*, 2020 WL 227404,
 12 at *3 (N.D. Cal. Jan. 15, 2020) (granting motion in limine to exclude evidence of other lawsuits
 13 due to risk of “time-consuming tangents about the merits of those trials” (citation omitted)).

14 Evidence of previous litigation is “substantially more prejudicial than probative because of
 15 the high risk the jury will treat the evidence as propensity evidence,” especially where, as here,
 16 such evidence bears “low probative value . . . as to [Google’s] motives or intent” in the case at
 17 hand. *Copart, Inc. v. Sparta Consulting, Inc.*, 2018 WL 1871414, at *7–8 (E.D. Cal. Apr. 19, 2018)
 18 (granting motion in limine to exclude evidence of other lawsuits).

19 Finally, putting aside the fact that the Other Matters did not result in final judgments, even
 20 if they do broadly concern Google’s user privacy practices, they are subject to different laws and
 21 standards that are not probative of the narrow issues in this case. But to a jury weighing the facts
 22 of the instant matter, hearing descriptions of similar data collection processes or popular product
 23 names may cause confusion as to what factual disputes actually need to be resolved to prove harm
 24 to Plaintiffs and class members. Evidence about Other Matters should be barred from trial.

25 **III. CONCLUSION**

26 For the foregoing reasons, the Court should exclude any evidence or argument about (1)
 27 reference to leaks or misuse of unrelated data and (2) other litigation and regulatory or
 28 governmental investigations involving Google’s privacy practices.

1 Dated: June 24, 2025

COOLEY LLP

3 By: /s/ Eduardo E. Santacana

4 Benedict Y. Hur
5 Simona Agnolucci
6 Eduardo Santacana
7 Argemira Flórez
8 Harris Mateen
9 Isabella McKinley Corbo

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11 Attorneys for Defendant
12 Google LLC
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12 UNITED STATES DISTRICT COURT
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15 ANIBAL RODRIGUEZ, et al. individually and
 on behalf of all others similarly situated,
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Plaintiff,

v.

GOOGLE LLC,

Defendant.

Case No. 3:20-CV-04688-RS

[PROPOSED] ORDER GRANTING DEFENDANT GOOGLE LLC'S MOTION IN LIMINE NO. 3 TO EXCLUDE REFERENCE TO AND EVIDENCE OF DATA LEAKS AND OTHER LITIGATION

Date: July 30, 2025
 Time: 09:30 A.M.
 Court: Courtroom 3, 17th Floor, SF
 Judge: Hon. Richard Seeborg

Date Action Filed: July 14, 2025
 Trial Date: August 18, 2025

[PROPOSED] ORDER

Before the Court is Defendant Google LLC’s (“Google”) Motion in Limine No. 3 to exclude reference to and/or introduction of evidence relating to (1) leaks or misuse of unrelated data and (2) other litigation and regulatory or governmental investigations involving Google’s privacy practices.

Having considered the Notice of Motion and Motion in Limine, the incorporated Memorandum of Points and Authorities, the Omnibus Declaration of Eduardo E. Santacana in Support of Google LLC's Motions in Limine Nos. 1-12 filed concurrently therewith, and the exhibits attached thereto, along with other materials in the record, argument of counsel, and such other matters as the Court may consider, the Court GRANTS Google's Motion.

Accordingly, IT IS HEREBY ORDERED THAT:

Reference to and/or introduction of evidence relating to (1) leaks of unrelated data and (2) other litigation and regulatory or governmental investigations involving Google's privacy practices will be excluded from trial in the above-captioned matter.

IT IS SO ORDERED.

DATED:

Honorable Richard Seeborg
United States District Judge

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